

# EXHIBIT A

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
5 KEITH COOK,

6 Plaintiff,

7 -against-

8 BANK OF AMERICA & CO., JOHN FRAZZA AND  
9 SUSAN COLE,

10 Defendants.

11 Docket No. 09 CV 8039  
12 -----x

13  
14 DEPOSITION of the Plaintiff, KEITH  
15 COOK, taken by the Defendants, held at the  
16 law offices Edwards, Angell, Palmer &  
17 Dodge, LLP, 750 Lexington Avenue, New  
18 York, New York, on March 11, 2010,  
19 commencing at 10:05 a.m., before Michele  
20 D. Lucchese, a Shorthand Reporter and Notary  
21 Public within and for the State of New York.  
22  
23  
24

25 Job No: 233614

A P P E A R A N C E S :

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oOo

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED  
by and between the attorneys for the  
respective parties herein that the  
sealing, filing and certification of the  
transcript of the within examination  
before trial be, and the same hereby are  
waived.

IT IS FURTHER STIPULATED AND AGREED  
that said transcript may be signed and  
sworn to before any Notary Public or  
Commissioner of Deeds with the same force  
and effect as if signed and sworn to  
before an officer of this Court;

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the form  
of the questions, are reserved for the  
time of trial.

oOo

1 Cook

2 that you had filed in this case?

3 A. I did not review that.

4 Q. As you understand it, what are  
5 the claims that you are making against  
6 Bank of America?

7 A. Racial discrimination and  
8 retaliation.

9 Q. What individuals of Bank of  
10 America do you claim discriminated against  
11 you based on your race?

12 A. Sue Cole and John Frazza.

13 Q. Anyone else?

14 A. That's it.

15 Q. And what individuals do you claim  
16 retaliated against you?

17 A. Sue Cole and John Frazza.

18 Q. Anyone else?

19 A. No.

20 Q. I just want to start with you  
21 giving me a brief description of your  
22 background. Let's start with your  
23 educational background. Could you  
24 describe that for me?

25 A. Sure. I attended Howard University.

1 Cook

2 component?

3 A. No.

4 Q. So, is it correct that in or  
5 around 1999 you had approximately sixty to  
6 \$70,000 worth of income from SOBRO and  
7 another \$45,000 --

8 A. Plus or minus.

9 Q. I have to finish my question.

10 And another \$45,000 worth of  
11 income from your work with York College  
12 and the SBA?

13 Now your answer.

14 A. Plus or minus.

15 Q. Why did you leave SOBRO?

16 A. To join Fleet. Actually, I was  
17 recruited to join Fleet.

18 Q. Who recruited you?

19 A. Burnell Grear.

20 Q. Who is Burnell Grear?

21 A. Burnell was the SVP for Community  
22 Investment Group at Fleet.

23 Q. Is Burnell a man or a woman?

24 A. Woman.

25 Q. How is it that you came to know

1 Cook

2 Burnell?

3 A. She came into my office one  
4 evening. Her --

5 Q. Which office?

6 A. One of her employees --

7 Q. Can I ask you which office?

8 A. The office at York College.

9 One of her employees came into  
10 the office at York College; we spoke. She  
11 came back with Burnell and Burnell offered  
12 me a job.

13 Q. What was the job that Burnell  
14 offered you?

15 A. Community investment officer  
16 responsible for Queens and Long Island.

17 Q. What did you do as the community  
18 investment officer responsible for Queens  
19 and Long Island?

20 A. I identified organizations to  
21 make recommendation to the bank to invest  
22 in under the Community Re-investment Act.

23 Q. Did you have a corporate title  
24 when you joined Fleet?

25 A. Vice president.

1 Cook

2 A. Until 2003, I guess.

3 Q. What happened in 2003?

4 A. The merger with Bank of America.

5 Q. So, I'm going to help you out  
6 here. I'll give you the effective date of  
7 the merger. It was April 1, 2004.

8 Did your position change before  
9 the merger?

10 A. My position was eliminated before  
11 the merger.

12 Q. And you think that was in 2003?

13 A. Approximately around that time,  
14 around 2003, 2004. I don't remember  
15 exactly.

16 Q. Were you offered a severance?

17 A. Yes, I was.

18 Q. Did you accept the severance  
19 offer?

20 A. No, I was recruited by someone  
21 else while I was out of the country.

22 Q. You will have to explain that  
23 answer.

24 A. Okay.

25 My position was eliminated. I



1 Cook

2 call from someone at Bank of America?

3 A. That is correct.

4 Q. And at this time, when you  
5 received the call from someone at Bank of  
6 America, had the merger taken place?

7 A. I don't remember. Banks have  
8 customer day one, legal day one, name day  
9 one. There was no, to my knowledge,  
10 effective merger that had taken place. I  
11 don't know for me because I was at Fleet.  
12 I really didn't pay attention to that stuff.

13 Q. Give me again the name of the  
14 individual who called you.

15 A. Tom Winston.

16 Q. You flew to Atlanta?

17 A. Yes.

18 Q. Had a meeting with Mr. Winston?

19 A. Yes.

20 Q. What position did he offer you?

21 A. Regional manager in the  
22 neighborhood lending wholesale mortgage.

23 Q. Let me ask you about the position  
24 that you had at Fleet. Was that entire  
25 unit laid off?

1 Cook

2 A. Yes.

3 Q. Every one in community banking  
4 was laid off?

5 A. Except for Maurice, but all of  
6 the community banking officers were laid  
7 off.

8 Q. Maurice who?

9 A. Coleman.

10 Q. What happened with Maurice  
11 Coleman?

12 A. He went to work in another area  
13 somewhere, I don't know.

14 Q. When did you start in  
15 neighborhood lending wholesale mortgage?

16 A. I guess it was -- I don't  
17 remember when the first severance  
18 occurred, but maybe a month, three weeks  
19 after that. I know I was out of the  
20 country for a month and I returned; I  
21 started with that job.

22 Q. Could it have been around May of  
23 2004?

24 A. It could have been around there.  
25 I think it was before then. It

1 Cook

2 could have been -- actually, I don't  
3 remember. I remember it being in the  
4 fall.

5 Q. Of 2004?

6 A. Approximately 2004. 2003 or  
7 2004.

8 Q. Was the elimination of the  
9 community banking in anticipation of the  
10 merger?

11 A. I have no idea. That was -- that  
12 was a decision made way above my head.

13 Q. So, again, your position was  
14 regional marketing manager, was that your  
15 position?

16 A. Yes.

17 Q. What did you do in that role?

18 A. My job was to go out and build  
19 relationships with wholesale mortgage  
20 brokers for delivery of affordable  
21 mortgage products in the states of -- it  
22 started for me in New York through  
23 Pennsylvania, then it became New England  
24 and New York through Pennsylvania.

25 Q. How long did you have that role?

1 Cook

2 given some stock, restricted stock.

3 Q. Do you know what the pay out on  
4 the restricted stock was?

5 A. You had to hold on to it for  
6 three years, I think.

7 Q. And you received the payment on  
8 that then at some point?

9 A. I'm sure I did.

10 Q. In October of 2005 you were  
11 offered another position but you declined  
12 it?

13 A. Yeah.

14 Q. Were you then offered severance?

15 A. I was then -- yeah.

16 What happens is you get this  
17 package in the mail, as you can imagine,  
18 and it says call this number and here's --  
19 you've worked this years, here's the money  
20 that you're entitled to. That's  
21 essentially what happened.

22 Q. Did you sign that package?

23 A. No, I did not. To the best of my  
24 memory, I don't think I did.

25 Q. What happened next in terms of

1 Cook

2 your employment then?

3 A. I got a -- became the retail  
4 manager for retail mortgage.

5 Q. Was there a period of time when  
6 you had been terminated by the bank?

7 A. No, I was hired the next day in  
8 this role. After getting that package, I  
9 think it was two days, Josh Diaz spoke to  
10 me. He had been the manager of this  
11 failed office in New York which had a  
12 series of repeated failed managers. I  
13 sent an e-mail to John Frazza at eleven  
14 o'clock that night. I believe I was hired  
15 that next morning, but he had clearly  
16 understood my track record.

17 Q. John Frazza did?

18 A. Yes.

19 Q. And Josh Davis was the prior  
20 manager?

21 A. Josh Diaz.

22 Q. Josh Diaz, sorry about that.

23 He was the prior manager for the  
24 New York market?

25 A. For about a month. He came here,

1 Cook

2 the bank put him in a hotel, paid him a  
3 lot of money, and he quit because the job  
4 was too hard for him, according to him.

5 Q. Did you have a conversation with  
6 him about this?

7 A. Absolutely. I met with him in a  
8 restaurant.

9 Q. When did that happen?

10 A. I guess around October of 2005.

11 Q. Is that how you learned that  
12 there was an opening?

13 A. Yes.

14 Q. And then you e-mailed John Frazza?

15 A. That evening after our dinner.

16 Q. Did you then meet with John  
17 Frazza?

18 A. Yes, he asked me to catch a train  
19 to Rhode Island I believe the next day.

20 Q. Did you interview for the  
21 position then?

22 A. Yes, I did.

23 Well, interview . . . that's a  
24 hard word in our world of mortgage. I was  
25 offered the position.

1 Cook

2 Q. Did he offer you the position  
3 that day in Rhode Island?

4 A. When I got to Rhode Island, yes.

5 Q. Prior to him offering you the  
6 position, did you and he have a  
7 conversation about your qualifications for  
8 the position?

9 A. He had already known of them.

10 No.

11 Q. So, what was the discussion that  
12 you had with John Frazza that day in Rhode  
13 Island as best you can recall?

14 A. I need a manager -- as best I can  
15 recall, I need a manager in this office.  
16 It's one of the poorest performing offices  
17 in the franchise. Do you want the job?  
18 Yes, I'll take it.

19 Q. Where was the office physically  
20 located at that time?

21 A. 60 Hempstead Avenue, West  
22 Hempstead.

23 Q. And what was the role that you  
24 were offered?

25 A. Manager, New York sales manager,

1 Cook

2 retail mortgage sales manager, New York  
3 City and Long Island.

4 Q. Were you still a vice president  
5 at this time?

6 A. That is correct.

7 Q. What was your compensation that  
8 you were offered in that role?

9 A. I -- again, this is some time  
10 ago, but I think the starting was a  
11 commission, or some starting incentive of  
12 12,000 a month for three months, and after  
13 that you went to commission.

14 Can I get some water?

15 MS. SWEENEY: Absolutely. Do you  
16 want to take a break?

17 THE WITNESS: No, I'm fine.

18 Thank you for asking.

19 MS. SWEENEY: Feel free to move  
20 around.

21 Q. When you say it was 12,000 for  
22 three months, did you mean that that was  
23 like a guaranteed draw?

24 A. Guaranteed draw.

25 Q. Then did you go on a recoverable



1 Cook

2 A. That is correct.

3 Q. Is there anything else that you  
4 can recall of the first conversation that  
5 you had with Mr. Thomas?

6 A. No.

7 Q. What is the next conversation  
8 that you had with him?

9 A. I explained that I had been a  
10 sales manager at Bank of America, he had  
11 my information, he knew of me. He said he  
12 would get back to me.

13 Q. Is that all you can recall of the  
14 second conversation that you had with Mr.  
15 Thomas?

16 A. That is all I can recall of the  
17 second conversation.

18 Q. I'm going to ask you again; let  
19 me get my question out.

20 A. I honestly don't remember. I  
21 can't tell when you're finished because of  
22 your cadence. I will wait for a pause.

23 Q. I think that's a fine strategy.  
24 Let's use that.

25 Did you then have a third

1 Cook

2 couldn't pinpoint a first thing, then you  
3 went into these more general things.

4 Have you told me everything about  
5 Sue that you can recall right now or are  
6 these things that you recall from the  
7 beginning of your relationship with her?

8 MS. BROWN: Objection. Are you  
9 just asking for a narrative of his  
10 entire experience?

11 MS. SWEENEY: No, I'm not. I'm  
12 trying to figure out what it is he just  
13 testified about.

14 A. Well, I never said that I  
15 couldn't pinpoint it.

16 Q. Okay, so what is the first thing  
17 that you claim was race discrimination or  
18 retaliation?

19 A. Being brought in to meetings that  
20 no other manager had to go through and  
21 every time, from the moment Sue arrived,  
22 my discussions with her had a tribunal,  
23 with John on the phone, Margarite on the  
24 phone, or HR or Advice & Counsel on the  
25 phone; there was never a direct discussion

1 Cook

2 about my performance. It was always a  
3 disciplinary action or tone that came  
4 unfounded, unwarranted and was disparate.

5 You have documents. I mean, I'm sure I  
6 have stacks of e-mails on them.

7 Q. When was the first time?

8 A. Upon her arrival, slightly after  
9 her arrival, when I found myself being  
10 instructed no longer to coach my team, who  
11 I had historically coached to success.  
12 You are not to be in this meeting coaching  
13 your team.

14 Q. When did that happen?

15 A. Approximately 2006, 2007. I  
16 don't know. You'd have to look at some of  
17 the documents I've submitted.

18 Q. That you have submitted?

19 A. Yes.

20 Q. So, you think you submitted a  
21 document that would tell us when it is  
22 that Sue Cole --

23 A. I'm sure I have.

24 Q. Let me finish my question.

25 -- Sue Cole told you not to

1 Cook

2 attend meetings with your team?

3 A. I'm quite sure I have, yes.

4 Q. And, in fact, told you not to  
5 coach your team?

6 A. Yes. Specifically on a Sony-Ma  
7 training, yeah. That's when it first  
8 started.

9 Q. Do you claim that was race  
10 discrimination?

11 A. I claim that was race discrimination,  
12 yes.

13 Q. Do you claim that was retaliation?

14 A. I claim that was race  
15 discrimination, not retaliation at that  
16 point.

17 Q. At the time that it happened did  
18 you think it was race discrimination?

19 A. I thought it was -- I thought  
20 that it was unique and unusual and not  
21 something that my peers were experiencing.

22 Q. Did you understand my question?

23 A. Yes, I did.

24 Q. So, is that a no?

25 A. That is -- I think it was

1 Cook

2 disparate.

3 Q. Did you think it was  
4 discrimination?

5 A. Yes, I did.

6 Q. Based on your race?

7 A. Yes, I did.

8 Q. You said your peers were not  
9 subject to the same treatment; correct?

10 A. That is correct.

11 Q. Which peers are those?

12 A. The sales managers who reported  
13 to her.

14 Q. Who is that?

15 A. Mike DiDonna, Cheryl Davis, Darcy  
16 Gore, Derrick Sawyer. That's all I can  
17 remember right now. There were others as  
18 well, yeah.

19 Q. How do you know that those  
20 individuals were not asked to do the same  
21 thing that you were asked to do?

22 A. Because I would ask them.

23 Q. To whom did you speak?

24 A. All of them.

25 Q. You spoke with each one of those

1 Cook

2 Q. You have a memory as you sit here  
3 today of having spoken with Darcy about  
4 this?

5 A. Yes.

6 Q. And speaking with her at the  
7 time?

8 A. Yes.

9 Q. Did you ever speak to Sue to find  
10 out why it was that she did not want you  
11 to manage or train your team on the  
12 Sony-Ma training?

13 A. Yes, I did.

14 Q. Did you do that before or after  
15 the training?

16 A. In an e-mail, I did it before the  
17 training.

18 Q. As best you can recall, what did  
19 you say?

20 A. Why is it that I can't train my  
21 team when I've been responsible for  
22 creating the bond loan agreements with the  
23 New Jersey Housing Authority and the State  
24 of New York Mortgage Authority on this  
25 product? And there was no response.

1 Cook

2 Q. You received no response?

3 A. I received no response.

4 Q. Did you complain to anyone at  
5 Bank of America about this issue at this  
6 time?

7 A. John.

8 Q. What did you say to John?

9 A. Why is it that I'm not able to  
10 train my team on this particular subject  
11 or this particular product or set of  
12 products?

13 Q. Again, was that in an e-mail or  
14 did you have a conversation --

15 A. That was in an e-mail.

16 Q. What, if anything, did John  
17 respond to you?

18 MS. BROWN: Are we referring to  
19 John Frazza?

20 Q. Are we referring to John Frazza?

21 A. Yes, we are. He said Sue will be  
22 conducting these meetings.

23 Q. Do you know whether Sue, in fact,  
24 conducted the meeting?

25 A. The meeting never occurred. The

1 Cook

2 A. That specific product or that  
3 product is specific to the State of New  
4 York. These peers were in other states,  
5 so they would have been conducting  
6 training on a variety of other issues.

7 Q. Well, at least some of these  
8 people were in New York; correct?

9 A. Uh-hum.

10 Q. Who had Upstate New York?

11 A. Mike DiDonna. No, definitely he  
12 was not, nor Kevin Horan. They survived  
13 on Sony-Ma. They were not instructed not  
14 to conduct training.

15 Q. Your knowledge of that comes from  
16 what?

17 A. Speaking with them.

18 Q. You asked them --

19 A. I was instructed to contact  
20 Mike's assistant and schedule for her to  
21 teach or to get with Mike to teach this  
22 program, despite the fact that I had  
23 already taught it once.

24 Q. Who told you to get with Mike to  
25 teach the program?



1 Cook

2 A. Sue and John.

3 Q. Sue and John told you to do that?

4 A. Yes.

5 Q. And this is Mike DiDonna?

6 A. Yes.

7 Q. Did you and Mike DiDonna ever  
8 teach the program?

9 A. No, actually, it was instructed  
10 with Gail Kresge from Sony-Ma.

11 Q. Did Mike DiDonna ever, as far as  
12 you know, conduct the program on his own?

13 A. Yes, he did.

14 Q. When was that?

15 A. Regularly. Sony-Ma training, it  
16 was a regular curriculum, it was an  
17 essential product. And Kevin Horan as  
18 well.

19 Q. I'm confused by your testimony,  
20 so I'm going to ask you and, hopefully, we  
21 can get that clarified.

22 Are you testifying that somebody  
23 from Sony-Ma came in and trained your team  
24 but did not train other teams?

25 A. They trained my team, yes. They

1 Cook

2 may have trained other teams, I don't  
3 know.

4 Q. And you believe that Mike DiDonna  
5 and Kevin Horan also trained their teams?

6 A. Yes.

7 Q. On their own?

8 A. Yes.

9 Q. At some point Sue and John told  
10 you to get together with Mike DiDonna to  
11 do training of whose team?

12 A. My team.

13 Q. Of your team?

14 A. Yes.

15 Q. But that training never occurred?

16 A. No.

17 Q. Why did that training not occur?

18 A. It was cancelled by John.

19 Q. Do you know why?

20 A. I have no idea why.

21 Q. Do you believe John's conduct  
22 with respect to this training was  
23 discriminatory against you because of your  
24 race?

25 A. Yes, I do.

Cook

Q. Why do you believe that?

A. Because I had previously helped -- worked with Bank of America to establish the agreement with both bond loan -- three bond loan agencies in three states; New York, New Jersey and Pennsylvania, independent of each other, in Trenton and in -- here in Manhattan, as well as in Philadelphia. I was competent in the area. I had already conducted this training with my team immediately after assuming the role as mortgage sales manager, so it was odd to me that suddenly I was not able to teach my team something that I was fluent in and understood, and was instructed to find someone else to assist me to do that without any evidence that there had been a deficiency in my team's performance in this area.

Q. Is that the entire basis of why you believe that was race discrimination from John Frazza?

A. For that specific incident, yes.

Q. What is the next incident that

1 Cook

2 A. No.

3 Q. You said in between the Sony-Ma  
4 training issue and what you said to me  
5 originally in your answer as the next  
6 issue, which I think you described as  
7 restricted in your hiring practices, you  
8 said that there were incidents of  
9 retaliation?

10 A. Yes.

11 Q. So, let's talk about those. In  
12 between these two things, the Sony-Ma  
13 that's the first incident that you recall  
14 of race discrimination, and the second  
15 incident that you recall as being  
16 restricted in your hiring practices.

17 A. Yes.

18 Q. In between those two incidents,  
19 you claim that there was some retaliation?

20 A. Yes.

21 Q. What was the retaliation?

22 A. I understood that I had the  
23 responsibility for a very large area and  
24 that the organization had the need to  
25 grow. A sales team is cultivated. While

1 Cook

2 away on vacation, I came back and  
3 discovered that a portion of my territory  
4 was going to be severed, which was fine.  
5 I'm an employee of the organization, and I  
6 explained to my team the need for growth  
7 in our organization and that many of them  
8 would be given the opportunity to move  
9 into other areas. After I came back and  
10 learned that this was already in process,  
11 this dismantling of the team. Then my  
12 team was instructed to go and work for --  
13 with someone else, which is unusual.

14 We attend sales meetings. Much  
15 like a coach of any team, you develop a  
16 culture, a work ethic, a rhythm with your  
17 team to success. They did not want to go  
18 to work for anyone else and they refused.  
19 In a conversation with Sue, listening to  
20 her on the phone, she is telling John that  
21 they refused because I said something to  
22 them, I did something. I don't have the  
23 power of hypnosis. These individuals  
24 decided that they wanted to remain with  
25 their manager. Following that event there

1 Cook

2 was a series of retaliatory events that  
3 occurred.

4 Q. Let's break that down. I asked  
5 you what the retaliation was and you  
6 described to me that you had gone on  
7 vacation, you came back and you learned  
8 that a portion of your territory was going  
9 to be severed and you were fine with that,  
10 you understood that you were an employee --

11 A. Absolutely.

12 Q. Are you claiming that the  
13 severance of that territory from your  
14 management was retaliatory or  
15 discrimination?

16 A. I'm claiming that when my team  
17 refused to --

18 Q. I want you to concentrate on --

19 A. No, that's not retaliation, no.  
20 No. It's odd.

21 Q. What territory was that?

22 A. Long Island.

23 Q. So, this was sometime in 2007, am  
24 I correct?

25 A. I think 2007.

1 Cook

2 A. There is not a manager I spoke  
3 to, specifically the number one manager in  
4 the Bank of America franchise, Dick Koch,  
5 who explained that he has never heard of  
6 that before. His comments, again to  
7 paraphrase, were that the institution  
8 sends us to Las Vegas to develop this  
9 environment of camaraderie and team  
10 development. I've never heard of a team  
11 being severed before. He said that's  
12 unusual, highly irregular.

13 Q. Was it your entire team that was  
14 being told to move to the new team?

15 A. It was half of my team.

16 Q. Which half?

17 A. Those who -- what was said to  
18 that team -- and I can't divide the team,  
19 anyone who had a bank branch supporting  
20 them or who supported a bank branch on  
21 Long Island.

22 Q. So, as I understand it, the  
23 mortgage loan officers got referrals from  
24 the bank branches; correct?

25 A. About 50 percent of their

1 Cook

2 business.

3 Q. So, if they had bank branches in  
4 this Long Island territory that provided  
5 them with referrals, they were being asked  
6 to join the Long Island team?

7 A. Right.

8 Q. And, so, you can't identify who  
9 that was at this time?

10 A. Anyone who had -- no, I can't,  
11 there were so many people at that time. I  
12 had 40 people working for me at that time.

13 Q. How many people actually  
14 transferred to this new territory?

15 A. One.

16 Q. Who was that?

17 A. John Pi.

18 Q. With respect to the others who  
19 didn't, why is it that they did not  
20 transfer?

21 A. Loyalty to their manager.

22 Q. Were they given an option to  
23 transfer?

24 A. They were given an ultimatum to  
25 transfer.



1 Cook

2 Q. But you told me they didn't  
3 transfer?

4 A. No, they did not.

5 Q. How did that transpire?

6 A. They, to the best of my memory or  
7 recall, wrote letters saying you can keep  
8 the bank branches, I don't wish to  
9 transfer.

10 Q. Can you identify any of them that  
11 did that?

12 A. Providence Aiossa, who was the  
13 largest producer at the time, and her team  
14 and a series of other people. Again,  
15 Siobahn, there were 40 people at that time  
16 who reported to me.

17 Q. A mortgage loan officer works  
18 often with a team; those 40 people, does  
19 that include that team or are you saying  
20 you had 40 mortgage loan officers?

21 A. I had 40 mortgage loan officers,  
22 approximately, 35 to 40, including staff,  
23 assistants and everyone else.

24 Q. So, that includes all that?

25 A. Yes.

1 Cook

2 Q. So, it's a total of all --

3 A. Well, loan officers, there were  
4 maybe -- staff there were probably about  
5 three administrative assistants, so maybe  
6 about -- I'll pick a number and say 32  
7 people.

8 Q. Is there anyone other than  
9 Providence that you recall today as you --

10 A. Deidre Collins.

11 Q. I'm sorry, I have to get the  
12 question on the record.

13 A. I've got to get your cadence  
14 down.

15 Q. Is there anyone other than  
16 Providence that you recall today who wrote  
17 a letter or refused to move to the Long  
18 Island team?

19 A. All of the loan officers who were  
20 asked who had branches on Long Island  
21 declined to move.

22 Q. I'm asking if you recall any  
23 specific individuals.

24 A. No, I don't remember.

25 Q. Providence Aiossa is the one that

1 Cook

2 you specifically recall?

3 A. Yes.

4 MS. BROWN: I think he also

5 testified about Deidre Collins.

6 Q. Is that true?

7 A. Deidre Collins.

8 Q. Anyone else?

9 A. Anyone who had branches at that  
10 time.

11 Q. Anyone that you can recall their  
12 actual name?

13 A. Rick Mercado, Hughroy Daily. The  
14 list goes on. I have to look at a list.

15 Q. Each of these individuals was  
16 told to move to the Long Island territory  
17 and refused to do it?

18 A. Yes.

19 Q. Do you know whether any of them  
20 at that time suffered any consequences as  
21 a result of refusal?

22 A. Providence Aiossa.

23 Q. And what, at that time, was the  
24 consequence that Providence suffered?

25 A. Suddenly investigations on

1 Cook

2 Providence began to pop up regarding  
3 allegations of fraud.

4 Q. And do you have any idea how  
5 those investigations started, what  
6 prompted them?

7 A. Word, request; those are the  
8 ideas I have. It's easy to initiate an  
9 investigation.

10 Q. Do you have any knowledge of what  
11 prompted those investigation?

12 A. No, I do not. Neither did  
13 corporate security.

14 Q. Do you agree that Bank of America  
15 has an obligation to investigate any  
16 allegations of fraud?

17 A. Absolutely.

18 Q. Regardless of the source of the  
19 allegations?

20 A. I agree with that.

21 Q. So, you told me that this you  
22 believe was race discrimination; correct?

23 A. Yes, I do.

24 Q. Have you told me all of the  
25 reasons why you believe that this was race

1 Cook

2 Q. How is it that you learned of the  
3 conversations?

4 A. My team members called me and  
5 said why is it that I was asked to come  
6 into a meeting with Sue and told that I  
7 don't have a choice, that I'm transferring  
8 to another team.

9 Q. Who told you that's what  
10 occurred?

11 A. Buddy Naipaul, Carlos Herman,  
12 Carolina Encarnacion, Karene Lenavenec,  
13 Richard Pagan, Allen Lee, Tony Choy,  
14 Denise Lott.

15 Q. Did you hear that from anyone  
16 else?

17 A. None that I can recall now.  
18 There were others, but none that I recall.

19 Q. And tell me how that is  
20 retaliation against you.

21 MS. BROWN: I'm going to object  
22 to the extent that calls for a legal  
23 conclusion.

24 MS. SWEENEY: I'm asking for his  
25 belief.

1 Cook

2 tell me the entire factual basis for your  
3 belief that this incident was retaliation  
4 against you?

5 A. That particular incident.

6 Q. Yes, that particular incident.

7 A. Yes, and the -- yes.

8 Q. Is this the first incident of  
9 retaliation that you're claiming in this  
10 lawsuit?

11 A. No, there were others. There was  
12 a series of others.

13 Q. So, what happened prior to this  
14 that you are claiming was retaliation,  
15 keeping in mind this incident occurred in  
16 or around January of 2008.

17 A. Prior to that I mentioned -- I  
18 wasn't particularly dedicated to becoming  
19 an SVP. I didn't care. I was a mortgage  
20 salesperson comfortably compensated. I  
21 asked about it, observed the criteria for  
22 it, met the criteria for it and I was told  
23 no. Which was number of employees you  
24 managed, XYZ, and there's a printed form.  
25 I was away on vacation working on a

1 Cook

2 project along with our real estate  
3 development unit, participating in  
4 conference calls with the national sales  
5 executive utilizing the bank's wireless  
6 system, where it's clear I'm away on  
7 vacation, 40 hours on vacation working.  
8 At that time there's a phone bill, which I  
9 need to access this wireless activity for  
10 this critical event. The phone bill comes  
11 in and I'm told you have to pay for it.

12 I mean, I'm going to let you go  
13 on because these events, we can go on and  
14 on.

15 My assistant, being met with the  
16 in the morning -- and we clearly as  
17 professionals understand that your  
18 administrative assistant is your  
19 heartbeat, being told in the morning that  
20 you're going to work for someone else.

21 Q. Are there any other incidents of  
22 retaliation that you claim occurred prior  
23 to January 2008 when your team -- or  
24 members of your team, were asked to move  
25 to a Manhattan team?

1 Cook

2 A. No, fluorescent lights, they  
3 bother me.

4 Q. Let me ask you this; what is the  
5 basis of your belief that you were not  
6 made an SVP as an act of retaliation  
7 against you?

8 A. That was an act of  
9 discrimination.

10 Q. Was it an act of retaliation?

11 A. That was an act of  
12 discrimination.

13 Q. So, this was race discrimination?

14 A. Yes.

15 Q. What makes you believe that you  
16 were not made a senior vice president  
17 because of race discrimination?

18 A. I had met all of the criteria.

19 Q. Are there any other reasons?

20 A. No.

21 Q. What reasons were you given at  
22 the time, if any?

23 A. I wasn't given an answer to my  
24 question at all.

25 Q. You had no answer at all?



1 Cook

2 A. No.

3 Q. Who was it as far as you know who  
4 made that decision?

5 A. It was John. I sent an e-mail to  
6 both, I believe.

7 Q. But do you know who made the  
8 decision?

9 A. It was John Frazza.

10 Q. Were any of your peers, as far as  
11 you know, senior vice president?

12 A. Darcy Gore.

13 Q. Anyone else?

14 A. No, I don't think they asked. I  
15 don't think they did.

16 Q. And when did you ask to become a  
17 senior vice president?

18 A. I don't remember the times.

19 Q. Did you have any conversations  
20 with Sue Cole on this issue?

21 A. I did.

22 Q. What were your communications  
23 with Sue Cole as best you can recall?

24 A. I'm sure I sent an e-mail asking  
25 and here is the criteria for it.

1 Cook

2 Q. So, you think you looked up the  
3 criteria?

4 A. Yes, I looked up the criteria and  
5 I sent a copy of it to her and to John,  
6 because it would have been his call. And  
7 there was no additional money assigned to  
8 it; I met the criteria.

9 Q. Are you aware of anyone else who  
10 requested to be a senior vice president  
11 but who was denied?

12 A. Cheryl Davis.

13 Q. Anyone else?

14 A. No.

15 Q. When did Cheryl Davis request  
16 that?

17 A. I don't know. Cheryl, I guess,  
18 requested it a few months earlier.

19 Q. Do you know why Cheryl's request  
20 was denied?

21 A. I couldn't speculate.

22 Q. Do you know who made the decision  
23 with respect to Cheryl's request?

24 A. John Frazza.

25 Q. Is there anyone else who

1 Cook

2 requested to be a senior vice president  
3 but was denied?

4 A. No.

5 Q. Are you aware of anyone who  
6 requested to be become a senior vice  
7 president and was permitted to do that?

8 A. Darcy.

9 Q. Do you believe that Darcy  
10 requested that or was that something that  
11 was bestowed?

12 A. She requested it.

13 Q. How do you know that she  
14 requested it?

15 A. She told me.

16 Q. When did she request it?

17 A. I don't know.

18 Q. Do you know who made the decision  
19 with respect to that?

20 A. John.

21 Q. Are you aware of anyone else who  
22 requested to be a senior vice president  
23 and was permitted to do that?

24 A. No.

25 Q. Prior to these incidents of

1 Cook

2 retaliation that you have testified about,  
3 had you made any complaint of race  
4 discrimination?

5 A. Prior to that, no.

6 Q. And that would be prior to the  
7 December/January time frame when all of  
8 these incidents occurred, according to  
9 you?

10 A. No, no, I had not.

11 Q. So, you said that you were denied  
12 payment for your phone bill while you were  
13 on vacation; correct?

14 A. Yes, a \$3,000 phone bill.

15 Q. Was any portion of that paid by  
16 the bank?

17 A. Generally, all of it was paid by  
18 the bank.

19 Q. In this instance was any of it  
20 actually paid by the bank?

21 A. No.

22 Q. What makes you believe that this  
23 is retaliation against you?

24 A. Because the phone -- I asked for  
25 it to be paid, simply because -- it wasn't

1 Cook

2 discussed with me, when ironically the  
3 entire industry knew who the person was.

4 Which events? A person coming in  
5 and interviewing and then being told, you  
6 know what, you're going -- we're bringing  
7 you into the bank, you're going to work  
8 for Keith, and then they get an offer  
9 letter that says you're going to work for  
10 someone who hasn't come here yet.

11 So, there are a series of events,  
12 Siobhan. I'm sure you've got a stack of  
13 these things.

14 Q. What my question was is why do  
15 you believe that the bill for you using  
16 this wireless card during your vacation,  
17 not being paid by the bank, so it wasn't  
18 reimbursed to you by the bank, why do you  
19 believe that was retaliation?

20 A. Because the group of people who  
21 were asked to transfer refused to transfer  
22 a second time.

23 Q. So, you think this was in  
24 retaliation for their refusal to transfer?

25 A. Yes.

1 Cook

2 Q. Was it in retaliation for  
3 anything else?

4 A. No.

5 Q. Do you believe that you not being  
6 a senior vice president was in retaliation  
7 for your team's refusal to transfer?

8 A. I believe that was racial  
9 discrimination. No, I don't.

10 Q. You're right, you did tell me you  
11 thought it was race discrimination. I  
12 think originally we talked about it and  
13 you said retaliation and you changed that.

14 So, then, the next thing you said  
15 that was retaliation was your assistant  
16 was told that she was going to work for  
17 someone else?

18 A. Yes.

19 Q. What was that in retaliation for?

20 A. To take away my admin who was  
21 responsible --

22 Q. Was this again in --

23 A. That was in retaliation.

24 Q. It was in retaliation for your  
25 team refusing to transfer to another

1 Cook

2 manager?

3 A. Yes.

4 Q. Was it in retaliation for  
5 anything else?

6 A. I don't know. It could have been  
7 retaliation -- Siobhan, give me the  
8 question again; I want to answer it.

9 Q. I'm going to state it in a  
10 different form.

11 Do you believe that that was in  
12 retaliation for anything other than your  
13 team refusing to transfer?

14 A. Yes.

15 Q. What do you believe it was in  
16 retaliation for?

17 A. I believe it was in retaliation  
18 for my writing a letter to the senior  
19 leadership team asking why I was being  
20 discriminated against in this way, why I  
21 was experiencing patterns that no other  
22 manager was experiencing. It was in  
23 retaliation for my writing that letter and  
24 not cc'ing or including my managers, after  
25 this behavior of lying to a group of

1 Cook

2 people and telling them that I didn't tell  
3 you that you were transferring. That's  
4 what I believe it was in retaliation for.

5 Q. Is there anything else that you  
6 believe it was in retaliation for?

7 A. No.

8 Q. Were there any other incidents of  
9 retaliation, other than these that you  
10 have testified about that occurred in that  
11 late December, early -- late December  
12 2007, early 2008 time period?

13 A. None that I can remember, other  
14 than -- one second. I think there was a  
15 team meeting in Boston, if I remember that  
16 time period, January, a sales manager  
17 meeting in Boston.

18 And as we're sitting here,  
19 someone walks in, the chairs are filled  
20 with sales managers as they are at this  
21 conference table, and they look at you and  
22 say anyone who knows me -- and I imagine  
23 that's January, okay, I believe it's  
24 January. Anyone who knows me knows that  
25 anyone who opposes me is not long for my



1 Cook

2 world. And then you have heads in the  
3 room turn and look at you, because the  
4 person is looking at you.

5 Q. Who is the person talking and  
6 saying that?

7 A. John Frazza.

8 Q. Who turned their heads? Can you  
9 name anyone specifically?

10 A. Mike DiDonna, Cheryl, Derrick  
11 Sawyer, Rob Franklin, Mary Ruth Ryan.

12 Q. Anyone else?

13 A. Those are the names that just  
14 come to me, that I see their faces that  
15 turned when they looked at me, because I  
16 was sitting at the end of the table.

17 Q. Did you turn and look at anyone?

18 A. I turned and looked at all of  
19 them because they were turning and looking  
20 at me. I was sitting at the end of the  
21 table, so I didn't really have to turn.  
22 The person was standing on the opposite  
23 side of the table. I might have been  
24 sitting where -- I'm sorry, what's your name?

25 MS. SWEENEY: Michele.

1 Cook

2 Q. So, you were at one end of the  
3 table and he was at the other end of the  
4 table?

5 A. Yes.

6 Q. And, as he said this, his eyes  
7 were on you?

8 A. Yes.

9 Q. Other people looked?

10 A. Yes.

11 Q. And you looked at other people?

12 A. Yes.

13 Q. How many people were at this  
14 meeting?

15 A. Let's say 15 plus.

16 Q. Were they on Sue's team or  
17 anybody else's team?

18 A. The New England team and the  
19 Metro New York team.

20 Q. So, there were people from  
21 Connecticut?

22 A. Yes.

23 Q. There were people from Rhode  
24 Island, Massachusetts?

25 A. Yes, absolutely.

1 Cook

2 Q. Did John Frazza say your name  
3 when he said that?

4 A. Nope.

5 Q. So, he didn't make any reference  
6 to you specifically?

7 A. Nope.

8 Q. In his words?

9 A. Nope.

10 Q. The reason that you believe it's  
11 retaliation is why?

12 A. Again, because the team had  
13 refused to transfer along, and at some  
14 point -- again, Siobhan, these dates are  
15 not something that I walk around thinking  
16 about every day. In fact, I try to put it  
17 out of my mind.

18 John had come to New York to  
19 reinforce the fact that there was the need  
20 for growth and for people to move and they  
21 had declined in that meeting or after that  
22 meeting.

23 Q. So, was John the individual who  
24 met with these people?

25 A. Sue Cole.

1 Cook

2 So, she said I was off message; he said  
3 that I was off message.

4 Q. Let's go back so we have some  
5 clarity on this issue, because it keeps  
6 coming up. So, let's just go through it.

7 When was the first time that you  
8 learned that the bank was going to  
9 establish a Manhattan branch separate and  
10 apart from the other four boroughs?

11 A. When my team told me they had  
12 meetings without me. I'm sorry, I want to  
13 take that back. When I walked into a  
14 senior leadership meeting and the admin  
15 for -- who'd done planning for the floor,  
16 told me I had a request for an additional  
17 25 seats on a floor that had no space.

18 Q. That is for a location in  
19 Manhattan?

20 A. That is for a location in  
21 Manhattan, yes.

22 Q. Who was the admin?

23 A. Cathy Mendelson. She worked for  
24 Jim.

25 Q. Jim who?

1 Cook

2 A. Hedden.

3 Q. Do you recall when that was? Was  
4 it around January?

5 A. It was around that time.  
6 January, February, around that time.

7 Q. What, if anything, did you do  
8 when you learned that there was a request  
9 for 25 seats?

10 A. I sent John an e-mail.

11 Q. What did John say?

12 A. He called me. He said it was an  
13 oversight, that there were growth plans.  
14 He should have told me.

15 Q. So, this is the first time that  
16 you're learning of this plan?

17 A. That, and -- that was the first  
18 time, yes.

19 Q. Did you have any meetings with  
20 John in Providence, Rhode Island, related  
21 to this plan for the New York market?

22 A. That meeting, yes, I did.

23 Q. When did that occur?

24 A. That occurred the same day as the  
25 sales meeting, prior to his comment anyone

1 Cook

2 with the team, and then -- I'd say  
3 three-and-a-half was the meeting in Rhode  
4 Island where I was taken into a separate  
5 room with John and Sue and given a list of  
6 my top performers and told all -- all of  
7 my top performers, and told they were  
8 going to be reassigned someplace else.

9 Q. Let's take it one step at a time.

10 A. Absolutely.

11 Q. I think we are at the first  
12 communication you had about this, John  
13 said he's sorry, it was an oversight.  
14 What is the next thing that happens as you  
15 can recall?

16 A. I get a call from someone  
17 explaining there is a posting for a  
18 Manhattan sales manager.

19 Q. Who was that someone? From now  
20 on, can you try to be -- so I don't have  
21 to ask so many questions about who it was,  
22 if you recall somebody's name, please  
23 state what the name is in your response.

24 A. I'll do that.

25 Q. Who was the person who you

1 Cook

2 Q. Did you ever see the posting for  
3 that position?

4 A. Never saw it.

5 Q. So, you hear from Jeff Barker and  
6 then what's the next thing that happens?

7 A. I sent an e-mail to John Frazza  
8 and asked about it.

9 Q. What did he say?

10 A. That was an oversight also.

11 Q. Was that in an e-mail to you?

12 A. That was in a discussion and an  
13 e-mail, as well. That was in an e-mail as  
14 well.

15 Q. What, if anything, happened next?

16 A. Nothing. I went to work, did my  
17 job.

18 Q. Was there any more contact  
19 between you and anyone on this issue of  
20 having a new branch manager in Manhattan?

21 A. No, not that I can remember.

22 Q. So, you never had any more  
23 contact with John or Sue about this?

24 A. I wouldn't say never. I would  
25 say not that I can remember.